IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1948

No. 811

THOMAS HODGE, GEORGE HODGE, NETTIE POWELL, ANNA LEASE and AGNES CRIPPEN,
Petitioners.

vs.

FIRST PRESBYTERIAN CHURCH OF STERLING, ILLINOIS
Respondent.

PETITION FOR REHEARING

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now come Petitioners, Thomas Hodge, George Hodge, Nettie Powell, Anna Lease and Agnes Crippen, by J. J. Ludens, their attorney, and ask the Court to grant a rehearing in the above entitled cause in which a petition for certiorari was denied on October 10, 1949, and for grounds not previously urged, set forth the following:

1. This decision would nullify and set aside the established law that the domicile controls as to whether a person died testate or intestate.

2. That this decision is contrary to the established decisions of this Court that full faith and credit must be given to the judicial proceedings and judgments of other courts.

3. That it nullifies the constitutional provision of giving full faith and credit to the judgments of another state.

We sincerely believe that the Court should have granted the petition for certiorari in this case and that it was a proper case to be heard in the Supreme Court of the United States on certiorari from the Supreme Court of Iowa.

Our petition was based upon the proposition that the Illinois court rendered a judgment stating that Mary E. Barrie, who was a resident of and domiciled in the State of Illinois, died intestate. That judgment is in full force and effect and under the Constitution of the United States is entitled to full faith and credit in every other state in the Union.

Under the doctrine of res judicata, this matter was adjudicated between the same parties in the courts of Illinois with the result that the Illinois courts held that the testator died intestate. The fact that the Iowa laws in regard to revocation of wills might be different from the Illinois laws does not alter the matter. That question was decided by this court in the case of *Fauntleroy* vs. *Lum*, 210 U. S. 230.

We cannot help but feel that in denying this petition the court overlooked the fact that the judgment in Illinois is conclusive in every other state in the Union. It is conclusive between the parties in Iowa as well

as in Illinois and if that is the case, how can this Iowa judgment stand and overrule the judgment of the Supreme Court of Illinois. If it does, then it is in direct violation of the constitutional provisions of full faith and credit.

It has been laid down by this Court by Chief Justice Marshall that the judgment of a state court shall have the same credit, validity and effect in every other court in the United States which it had in the state where it was pronounced and that whatever pleas that would be good to a suit thereon in such state and none others could be plead in any other court in the United States. (*Hampton* vs. *O'Connell*, 3 Wheat. 234).

Under the full faith and credit clause of the Constitution, a defendant may not a second time challenge the validity of plaintiff's right which has ripened into a judgment, and the plaintiff may not, for his single cause of action secure a second or a greater recovery. (*Magnolia Petroleum Company* vs. *Hunt*, 320 U. S. 430).

This certainly makes it too plain for any question that a judgment rendered in any court is conclusive upon the parties and all litigation between the parties in any other state and we are at a loss to see why this judgment of the Court of Illinois stating that the testator died intestate is not a final and conclusive judgment in the State of Iowa, notwithstanding the fact that the land lies in the State of Iowa. We feel that this matter was not sufficiently presented in our petition for certiorari and we are therefore asking the Court for rehearing so that the matter may be duly presented for hearing.

This petition is presented in good faith and with the sincere belief of counsel that the Iowa decision is wrong and that if allowed to stand, it will be in violation of the full faith and credit clause of the Constitution of the United States, and is not presented for delay but that justice may be done. Our petition is restricted to the grounds above specified.

All of which is respectfully submitted.

J. J. LUDENS,
Counsel for Petitioners.